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Committee against Torture

Communication No. 482/2011

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by	R.S. et al. (represented by Ms. Karine Povlakic, Service d'aide juridique aux exilé-e-s (SAJE))
Alleged victims	R.S. et al.
State party	Switzerland
Date of complaint	3 November 2011 (initial submission)
Date of decision	21 November 2014
Subject matter	Deportation to Kosovo[1]
Procedural issue	None
Substantive issue	Risk of torture
Articles of the Convention	3 and 22

[1] All references to Kosovo in the present document should be understood to be in full compliance with Security Council resolution 1244 (1999), without prejudice to the status of Kosovo.

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 482/2011*

Submitted by	R.S. et al. (represented by Ms. Karine Povlakic, Service d'aide juridique aux exilé-e-s (SAJE))
Alleged victims	R.S. et al.
State party	Switzerland
Date of complaint	3 November 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 21 November 2014,

Having concluded its consideration of complaint No. 482/2011, submitted on behalf of R.S., her son V.S., her daughter-in-law B.S., her daughter E.S., her grandson A.S. and her nephew H.S., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are R.S., her son V.S., her daughter-in-law B.S., her daughter E.S., her grandson A.S. and her nephew H.S., born, respectively, in 1948, 1979, 1986, 1982, 2010 and 1958. They are of Albanian ethnicity and are originally from Kosovo.[1] They live in Switzerland, with the exception of V.S.,[2] who was deported to Kosovo in 2014, but are at risk of being sent back to Kosovo. They claim that their deportation would constitute a violation by Switzerland of their rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by Ms. Karine Povlakic of Service d'aide juridique aux exilé-e-s (SAJE).

* The text of an individual (dissenting) opinion of Committee member Mr. Alessio Bruni is appended to the present decision.

[1] All references to Kosovo in the present document should be understood to be in full compliance with Security Council resolution 1244 (1999), without prejudice to the status of Kosovo.

[2] V.S. was deported after being sentenced in 2011 to 3 years and 6 months' imprisonment for burglary in Switzerland.

1.2 On 11 November 2011, under rule 114 of its rules of procedure, the Rapporteur on new complaints and interim measures, acting on behalf of the Committee, requested the State party to stay its enforcement of the order to expel the complainants while their complaint was being considered by the Committee.

The facts as presented by the complainants

2.1 The complainants used to live in Grabanice, a village of 400 inhabitants of Albanian ethnicity in the district of Kline, Kosovo. They lived together in the family home, as is the custom, with the exception of H.S., the nephew of R.S., who lived separately.

2.2 On 6 December 2004, while H.S. was driving home, he was shot at from a vehicle that was following him. H.S. was not hit, but a friend who was with him was wounded. The police found dozens of automatic rifle casings on the road. The prosecutor opened an inquiry into the attempted murder committed by a person or persons unknown. H.S. subsequently received threatening telephone calls. He reported them to the police, who registered his complaints. However, the police did not ask for his telephone number and made no effort to trace the persons who had made the calls.

2.3 On 27 June 2006, H.S. was in his car with a friend when the vehicle exploded. H.S. was seriously injured: his spleen ruptured and he suffered internal bleeding. Inquiries carried out jointly by the International Security Force in Kosovo (KFOR) and the police led to the finding that a remote-controlled mine had been placed in the boot of the complainant's car. After being discharged from hospital, the complainant continued to receive anonymous threats by telephone.

2.4 On 3 February 2007, V.S. was shot at as he was leaving the house. He threw himself to the ground and was not injured. He seized a Kalashnikov automatic rifle and fired indiscriminately in the direction from which the shots were coming before calling the police, who arrived at the scene 45 minutes later. The police found shell casings and two different shoe prints. The police also drew up a report, but chose not to bring dogs to the scene. V.S. was taken to the police station to make a statement, where the police confiscated his jacket, which had a bullet hole in it, as well as his Kalashnikov. The complainant was held for 72 hours for carrying an illegal weapon. The police also questioned his parents and sister to ascertain whether they had any suspicions or could offer any clues as to the identity of the assailants. In addition, a witness told police that he had seen two men armed with Kalashnikovs near the village bus stop.

2.5 Later that night, the complainants heard rifle shots, stones being thrown at the roof, and footsteps circling the house. In addition, one of V.S.'s cows was stolen, and he received three anonymous telephone calls during which death threats were made. He received the last such telephone call one week before he left for Switzerland. The police patrolled the village for two weeks before calling off their surveillance. Feeling in danger, V.S. decided to leave the country on 5 May 2007, together with his cousin H.S., who also continued to receive threats. They entered Switzerland on 7 May 2007 thanks to a people-smuggler who took them to Vallorbe. Once there, they applied for asylum.

2.6 H.S.'s son, who had kept his father's mobile telephone, continued to receive death threats and therefore he too decided to leave Kosovo; he subsequently applied for asylum in Austria.

2.7 In October 2007, shots were again fired at the family house while R.S., her husband, their daughter and their daughter-in-law were at home. One day, two men called at the house and introduced themselves as friends of V.S. who were trying to contact him by telephone. V.S.'s father claimed not to know his son's telephone number and the men left, telling the father that they would see him later. Having been told about the incident by his family, V.S. said that he had no friends who met the men's description. His sister and father

therefore reported the visit to the police. Upon their return from the police station, one of the men was again circling the house in a car. The police arrested him and informed the complainants that he had been in possession of an iron bar. The family was then called to the police station to confirm that this was indeed the man who had previously called at their house. The police told the complainants to be careful, as the suspect was known by the police to have killed his wife and a friend. A car continued to circle the house and the complainants continued to receive telephone calls in which they were warned that if V.S. did not return home, his wife, his mother, his father and his sister would all be killed. One night, a man entered the yard of the family home and opened fire with an automatic rifle. The family called the police but they did not come to the scene.

2.8 On 3 November 2007, while V.S.'s father was walking along a road in the village, a car drew up close to him, and five shots were fired in his direction. The police came to the scene and said that a suspect was being investigated. They asked the complainants to be careful. A few days later, the threatening telephone calls resumed.

2.9 On 25 January 2008, V.S.'s father was found on one of the village streets with "his head sliced in two".[3] His daughter, E.S., took him to hospital where he died shortly after his arrival. The police came to the hospital with a photograph of the suspect, and E.S. recognized him as the man who had previously been making threats. The man was arrested four days later. An officer from the investigative police advised E.S. not to file a complaint because the suspect's gang was at liberty and could harm her. E.S. stood by her complaint and requested police protection for seven days (the traditional mourning period). Although the police agreed to the request, no patrol was sent out. Criminal proceedings were initiated against the prime suspect on the basis of testimony given by E.S. and her cousins. The suspect was taken into custody and held for a month, and then for a further 60 days, but was then released for lack of evidence.[4]

2.10 Following this murder, the police advised R.S., E.S. and B.S. to move elsewhere. The complainants were reluctant to turn to the international police for help. As the threatening telephone calls continued and a car was still circling their home, they went to spend two months at the home of H.S., who had already left for Switzerland. Another cousin who had helped members of the family in their dealings with the police also had to leave the country and went to Austria. After his departure, the women moved house again, but the threats continued. R.S. was threatened with death and E.S. with abduction. E.S. was the only one who ever left the house, and then only in case of urgent need and accompanied by cousins. One day, she noticed that the car belonging to the man suspected of her father's murder was following her. Feeling constantly in danger, R.S., E.S. and B.S. decided to leave the country on 6 June 2008 with the help of a people-smuggler. On 16 June 2008, they arrived in Switzerland, where they applied for asylum.

2.11 On 16 May 2008, the Federal Office for Migration rejected H.S.'s asylum application. On 19 August 2008, the applications of the four other complainants (V.S., R.S., E.S. and B.S.) were also rejected. The Federal Office for Migration ruled that the complainants did not meet the requirements for recognition of refugee status under article 3 of the Asylum Act because they could obtain adequate State protection in their own country.

2.12 On 24 November 2010, a cousin of the family who worked as a police officer and was also living in Grabanice was killed.

[3] The complainants submitted three death certificates issued by Kline District Court, the prosecutor of Peje Court and the medical examinations office of the Department of Justice of the United Nations Interim Administration Mission (UNMIK) in Kosovo.

[4] The complainant attaches a letter from the prosecutor, dated 27 May 2009, notifying E.S. that the criminal case initiated on 31 January 2008 for the murder of her father has been suspended.

2.13 On 11 May 2011, the Federal Administrative Court rejected the complainants' appeal against the Federal Office for Migration's decision to deny their asylum applications. The complainants claimed that they could not obtain effective protection in their own country, as shown by the fact that the judicial and police authorities had failed to provide such protection prior to their departure. The Court recalled that, in accordance with its case law, persecution by third parties is grounds for granting asylum only if the State of origin does not provide adequate protection, and it found that the Kosovo authorities had provided adequate protection insofar as their means and resources permitted. It also ruled that, in the absence of a reasonable body of hard evidence to the contrary, the fact that the police had been unable to find the culprits was not sufficient grounds either to conclude that the latter's conduct was supported, encouraged or endorsed by the State or to demonstrate the absence of adequate national protection. The Court specified that the requirement for adequate protection cannot be interpreted as a need for absolute protection, as no State is in a position to guarantee such protection for all its citizens in all places at all times. The Court also noted that, should they continue to feel unsafe in their village, the complainants could move to an urban area.

2.14 On 16 May 2011, the Federal Office for Migration notified all the complainants that, in the light of the Federal Administrative Court's decision, they must leave Switzerland no later than 13 June 2011.

2.15 On 13 June 2011, E.S. and B.S. submitted a request for review to the Federal Office for Migration. The request was based on the existence of new evidence, namely the murder of a family member who had been a police officer and the release without charge of the person whom the police had arrested in connection with the inquiry into the father's murder. On 20 July 2011, the Federal Office for Migration decided not to examine the substance of the two requests for review on the grounds that new evidence was lacking. B.S. appealed against the decision to the Federal Administrative Court on 2 September 2011, but the Court declared both the request for review and the appeal inadmissible.

2.16 On 26 July 2011, H.S. also submitted a request for review to the Federal Office for Migration, which, on 9 August 2011, decided not to examine the substance of the request. On 13 September 2011, the complainant filed a new request to have the decision to reject his asylum application reviewed in the light of his medical condition, i.e., diabetes-related symptoms from which he had been suffering for 10 years. On 21 September 2001, the Court declared this request inadmissible.

2.17 According to a report issued on 31 August 2011 by the Swiss Refugee Council, which carried out inquiries in situ and interviewed police officers involved in the investigation of the attempted murder of V.S. in 2007, the number of murders in Grabanice had risen considerably in the previous 10 years. Between 2000 and 2010, five persons were killed without either the police or the United Nations Interim Administration Mission in Kosovo (UNMIK) or the European Union Rule of Law Mission in Kosovo (EULEX) being able to identify the culprits. The police officers who were interviewed confirmed that the complainants' lives would be in danger if they returned to the village, that it appeared to be a case of personal revenge and that the police were no longer able to protect the family against the attacks. In fact, the murders remained a mystery for the police, given the absence of any suspect, clue or suspicions on the part of the family as to the identity and motives of the assailants.

The complaint

3.1 The complainants claim that their deportation to Kosovo would constitute a violation by Switzerland of their rights under article 3 of the Convention, as they would be exposed to death threats and a real danger of suffering a violent death.

3.2 The complainants assert that the Kosovo police are unable to protect them, as evidenced by the fact that the father of the family was killed following a number of death threats and murder attempts. They themselves were victims of serious and persistent threats and exposed to grave danger in Kosovo, yet no suspect was arrested and no criminal proceedings were initiated. The police were unable to provide them with continuous protection and patrolled their village only very occasionally. The police also told E.S. on several occasions that they were not able to protect the family and that they should all be careful. The complainants also state that the police advised E.S. to withdraw her testimony in order to avoid the risk of reprisals by the assailants' clan. The complainants further state that they cannot move to another town because Kosovo is a small, impoverished country whose population is made up of clans, which makes it impossible to move one's place of residence freely.

3.3 The complainants refer to the weakness and inefficacy of the judicial system in Kosovo, in which corruption is rife and the number of complaints filed by police officers exceeds the number of complaints filed by citizens.[5] The Constitutional Court is dealing with numerous complaints concerning flaws in the judicial system. In addition to problems of incompetency and internal disorganization, the judicial system is particularly ineffective in protecting victims and witnesses[6] in a society where personal vengeance is an established approach to the settlement of disputes.

3.4 The complainants consider that they have exhausted available domestic remedies, since decisions issued by the Federal Administrative Court on 11 May 2011 are final.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on 10 May 2012. After reviewing its internal procedures, it states that each of the Federal Administrative Court judgements was based on an in-depth examination of the complainants' allegations regarding the risks they would run if deported. The Court ruled that the Kosovo authorities' willingness and ability to prevent people from being persecuted was indisputable and that the authorities continued to prosecute perpetrators of criminal offences. The Court also noted that reports prepared by independent institutions such as the Council of Europe Commissioner for Human Rights indicated that, if the police were derelict in their duty, individuals could file complaints with specialized authorities such as the International Investigation Unit, the Kosovo investigative police and the Ombudsman's Office.

4.2 With regard to the specific situation of the complainants, the Federal Administrative Court found that the police force had intervened to protect them insofar as its means and resources allowed and that it had thus demonstrated its will and capacity to take action. Therefore, the fact that the course of action taken by the complainants was unsuccessful does not mean that adequate protection was lacking. Furthermore, the complainants have provided no concrete evidence to demonstrate that the police or other State bodies supported, encouraged or endorsed the conduct of the alleged assailants. No State can ensure absolute protection for its citizens against violent criminal acts in all places at all times. The State party further notes that the only new piece of evidence submitted by the complainants that the Kosovo authorities had not had the opportunity to examine is the investigative report issued by the Swiss Refugee Council on 31 August 2011. However, the State party finds no new evidence in this report that would alter the line of reasoning that

[5] The complainants refer to the United States Department of State *2010 Country Report on Human Rights Practices*, 8 April 2011, and specifically the section of the report on Kosovo entitled "Civil Judicial Procedures and Remedies", and to Freedom House, *Freedom in the World 2011*.

[6] The complainants refer to *Human Rights Watch, World Report 2011: Events of 2010*, 24 January 2011.

served as a basis for the decisions of the Federal Office for Migration and the Federal Administrative Court.

4.3 With regard to the risk of being tortured if deported to their country, the State party notes that at no time in the proceedings have the complainants claimed that they have been subjected to treatment that meets the definition contained in article 1 of the Convention. Furthermore, they have provided no evidence of such treatment. Therefore, none of the four criteria used to define torture in article 1 of the Convention has been met. In reality, the complainants are invoking a violation of their right to life, which is not a right protected under the Convention. Therefore, the complainants' claim that their deportation to Kosovo would constitute a violation of article 3 of the Convention is unfounded.

4.4 The criterion concerning the involvement of public authorities in the infliction of pain or suffering is not satisfied in the complainants' case either. According to the Committee's jurisprudence, as illustrated by communication No. 83/1997, *G.R.B. v. Sweden*, "the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention".[7] The State party notes that the complainants are not claiming that there is a risk of torture at the hands of a public official or other person acting in an official capacity, at their instigation or with their consent or acquiescence. They claim only that the police are unable to protect them from two individuals and that the judicial system in Kosovo is very weak.

4.5 In this regard, the State party notes that the Federal Administrative Court analysed the allegations in depth, took into account the capabilities of the Kosovo police and evaluated the action taken by the police in response to the complainants' claims. The State party finds no evidence that might give reason to believe that the Kosovo authorities would tolerate or encourage physical attacks against the complainants. Furthermore, the complainants have the possibility of moving to an urban area if they continue to feel unsafe in their village. The State party also notes that the complainants are not vulnerable persons and have a place to live and sources of income in their country.

4.6 The State party also contends that the fifth complainant, H.S., made several trips to Kosovo in 2009 while the asylum proceedings were under way, despite claiming to be a victim of murder attempts in his country. He is recorded as having crossed the border between Albania and Kosovo on several occasions at a crossing point not far from the complainants' village.[8] At the border checks, H.S. presented a Kosovo passport, the existence of which he had concealed from the Swiss authorities responsible for asylum procedures. The Swiss authorities also noted that H.S. disappeared on 15 January 2010 and reappeared on 23 March 2010.

4.7 The State party concludes that none of the complainants would be at risk of being subjected to treatment prohibited under article 1 of the Convention if returned to their country. It requests the lifting of the interim protection measures and a finding that article 3 of the Convention would not be violated in the event of deportation, since there are no substantial grounds for fearing that the complainants would be exposed to a real and personal risk of torture if they returned to Kosovo.

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[7] Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5. The State party also cites communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.4, in which the Committee confirmed this interpretation.

[8] The State party attaches a note from the authorities dated 24 February 2011 which contains the records on H.S.'s border crossings.

Complainants' comments on the State party's submission

5.1 On 10 July 2012, the complainants commented on the State party's submission. According to them, the State party's refusal to classify the risk of death as ill-treatment is immoral and denies their humanity. In their view, fearing for their safety, physical integrity and lives is a source of mental suffering and anguish of a severity that is tantamount to torture as understood in the light of the interpretation of the European Court of Human Rights in its judgement on *Soering v. the United Kingdom*.[9]

5.2 H.S., the fifth complainant, submitted a signed statement certifying that his Kosovo passport expired in 2006 and has not been renewed since. He had lost it before filing his asylum application and for that reason was unable to present it to the Swiss authorities. H.S. explains that he forgot his passport in the vehicle used by the people-smuggler who took him into Switzerland, and it could therefore have been used by someone else. He further asserts that he has never returned to Kosovo since submitting his asylum application. His "disappearance", as noted by the authorities of the State party, is a misunderstanding because the complainant reported that he was staying with an acquaintance in another area, but his statement would appear not to have been recorded by the authorities.

5.3 On 24 July 2013, the complainants added that, by decision of the Federal Administrative Court of 18 July 2013,[10] H.S., who was suspected of obstruction of justice, had been released after 7 months of pretrial detention because the acts of which he was accused were not of a serious nature. In 2012 he had met three times with his brother-in-law, who was wanted by the authorities on charges of murder and had gone into hiding.

5.4 On 31 October 2013, the complainants submitted a letter from B.S. dated 29 October 2013 bearing the heading "request for review of [her] administrative status".[11] The letter states that her husband, V.S., has been incarcerated in Switzerland since November 2011, after being sentenced to 3 years and 6 months' imprisonment for burglary. An appeal has been lodged against the conviction and the decision is pending. Should the Swiss authorities decide to deport her husband to Kosovo, B.S. requests that she not be returned with him, so as to protect her daughter, who was born in November 2011 in Switzerland, from the threats to which the family is exposed in Kosovo. B.S. states that she is prepared to divorce her husband should this be necessary in order for her to protect her daughter.

5.5 On 7 July 2014, the complainants informed the Committee that V.S. had been deported to Kosovo in March 2014. He is currently in pretrial detention, having been charged with the 2003 murder of a distant cousin who was living in the village where he was born.[12] V.S. believes that the father of this distant cousin is responsible for the murder of his own father in 2008, which was thus a revenge killing. Between 2003 and 2007, the year in which V.S. left the country, neither he nor his family were aware that he was suspected of the murder of his cousin. Furthermore, his wife, B.S., has initiated divorce proceedings from Switzerland, fearing that criminal proceedings against her husband could have implications for her safety if she were to return to Kosovo and could place her daughter in danger. The other complainants are still in Switzerland.

5.6 On 18 January 2010, E.S. gave birth to a child. The child's father is suspected of murder in Kosovo and cannot leave Kosovo while his trial is under way. This man and his

[9] *Soering v. the United Kingdom*, 7 July 1989, Series A No. 161.

[10] The complainants attach a copy of the Federal Administrative Court decision.

[11] The letter appears to be addressed to the Swiss authorities, but the complaint is not clear as to the intended recipient of this letter. It is addressed to "to whom it may concern".

[12] Counsel submits a statement from V.S.'s lawyer, dated 14 June 2014, which states that he is being held in pretrial detention on suspicion of the murder of an inhabitant of Grabanice on 19 May 2003 and that he fears for his life even in prison. According to V.S., the father of the deceased is a person who has considerable influence with certain Kosovo institutions.

family are embroiled in a vendetta with another family from a village neighbouring that of the complainants. Since the war, 15 members of the 2 families have been killed. E.S. does not wish to live with the father of her child and fears that he might take her son away from her, since the local tradition dictates that boys are to be raised in the father's family. E.S.'s son is also in danger of becoming involved in the feud between the families. E.S. also fears for her own safety, as she saw her father's murderer on several occasions when he came and threatened them at the family home.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any complaint unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes that the complainants have exhausted all domestic remedies available to them. As the Committee finds no further obstacles to admissibility, it declares the complaint admissible.

Violation of article 22 of the Convention

7. As regards non-compliance with the Committee's request of 11 November 2011 to suspend removal, the Committee recalls that the State party, by ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with the Committee in good faith in applying and giving full effect to the individual complaints procedure established thereunder. The Committee also notes that the Convention (art. 18) vests it with competence to establish its own rules of procedure, which then constitute an integral part of the Convention provided that they do not run counter to it. The Committee further recalls that the State party's obligations include observance of the rules adopted by the Committee, which are an integral part of the Convention. This includes rule 114 of the rules of procedure. That rule is specifically intended to give meaning and scope to articles 3 and 22 of the Convention, which otherwise would offer asylum seekers claiming a serious risk of torture nothing more than a purely relative, not to say theoretical, form of protection.[13] Consequently, the Committee considers that, by sending one of the complainants back to Kosovo despite having agreed to the Committee's request for interim measures, thereby presenting the Committee with a fait accompli, the State party has committed a breach of its obligations under article 22 of the Convention.

Examination of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present complaint in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the removal of the complainants to Kosovo would constitute a failure to fulfil the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The

[13] See communication No. 249/2004, *Dar v. Norway*, decision of 11 May 2007, para. 16.3, and communication No. 300/2006, *Tebourski v. France*, decision of 1 May 2007, para. 8.6.

Committee must decide whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture if they were returned to Kosovo. In assessing this risk, the Committee must take account of all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such an analysis is to determine whether the individuals concerned would be personally exposed to a real and foreseeable risk of being subjected to torture in the country to which they would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon return to that country. Additional grounds must be adduced to show that the individual concerned would be personally at risk. By the same token, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person is not at risk of being subjected to torture in his or her specific circumstances.

8.3 The Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State when there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as set forth in article 1 of the Convention. For the purposes of the Convention, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

8.4 The Committee notes that the complainants have never been subjected to torture or ill-treatment by the Kosovo authorities. The Committee also notes that, by their own account, the complainants are claiming to have been victims of threats and to have been placed at risk in Kosovo by members of another family which has no connection with government authorities. The Committee notes that the complainants refer to the weakness and inefficacy of the police and the judicial system in Kosovo and numerous cases of corruption, but observes that these are allegations of a general nature without direct bearing on the case. The Committee therefore considers that the complainants have not sufficiently substantiated their allegations concerning the failure of the State to protect them from the attacks to which they were subjected.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the complainants' removal to Kosovo by the State party would not constitute a breach of article 3 of the Convention. However, the removal of one of the complainants, V.S., to Kosovo in March 2014, notwithstanding the interim measures requested by the Committee, constitutes a violation of article 22 of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to take steps to prevent similar violations of article 22 from occurring in the future and to ensure that, in cases where the Committee has ordered interim measures, the complainants are not deported until the Committee has decided on the merits.

Appendix

[Original: English]

Individual (dissenting) opinion of Committee member Mr. Alessio Bruni

1. On 11 November 2011, under rule 114 of its rules of procedure, the Committee requested the State party to stay enforcement of the order to expel the complainants while their complaint was being considered by the Committee. However, the State party expelled one of them in March 2014.

2. It is my opinion that the non-compliance of the State party with the Committee's request for interim protection measures does not constitute a violation of article 22 of the Convention "per se".

3. It constitutes a lack of cooperation by the State party with the Committee during the Committee's examination of the communication and an obstacle to the Committee's full application of protection measures provided for in its rules of procedure with regard to individual communications.

4. The long-standing question of whether the Committee's rules of procedure and, in particular, rule 114 on interim measures, are legally binding on a State party to the Convention requires further discussion in the Committee.

5. However, I believe that the Committee must, at least, notify the State party that it considers a non-compliance with its rule 114 as a breach of the State party's obligations under article 22 of the Convention before taking the decision that the State party has violated that article.

6. In the case in question, the Committee had before it the information necessary to review its decision to grant interim measures in accordance with rule 114, paragraph 3. The information had been submitted by the State party on 10 May 2012 together with its request for lifting the interim measures. Comments on it had been submitted by the complainants on 10 July 2012. However, the Committee did not address the issue. It was not obliged to do so, but, in reply to the State party's request, it should have notified the State party that it would have considered the expulsion of the complainants or one of them as a breach of article 22 of the Convention.

7. In the absence of such notification, I do consider that the Committee's decision that the State party was in breach of its obligations under article 22 of the Convention was not justified.